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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAHMAL AAHMIN COLEMAN,

Defendant and Appellant.

2d Crim. No. B218066
(Super. Ct. No. F429514)
(San Luis Obispo County)

Appellant Jahmal Aahmin Coleman pleaded no contest to kidnapping (Pen. Code, § 207, subd. (a)),¹ first degree robbery (§§ 211/212.5, subd. (a)), first degree burglary (§§ 459/460), and felon in possession of a loaded firearm (§ 12031, subd. (a)(1)). He admitted he personally used a firearm in the kidnapping (§ 12022.53, subd. (b)), and having served two prior prison terms within the meaning of section 667.5, subdivision (b). He was sentenced to 22 years in state prison and appeals from an order denying his motion to withdraw the plea. We affirm.

FACTS AND PROCEDURAL HISTORY²

Coleman forced his way into the apartment of Ronald Valerio and demanded money and drugs. Coleman was armed with a gun. After Valerio told Coleman he had no money or drugs, Coleman placed other items of personal property

¹ All statutory references are to the Penal Code.

² The statement of facts was prepared from a transcript of the preliminary hearing.

into a duffel bag. Coleman then forced Valerio out of his apartment, kicked in the door of a neighbor's apartment, and went inside with Valerio. The building's assistant manager went to the neighbor's apartment and confronted Coleman. Coleman ran from the apartment after the manager had grabbed the cap and sweatshirt Coleman was wearing. The manager and another man gave chase but Coleman escaped. Another tenant who witnessed the break-in of Valerio's apartment identified Coleman as the perpetrator. The manager was 80 percent certain Coleman was the perpetrator.

Coleman pleaded not guilty, but during jury voir dire, Coleman changed his plea from not guilty to no contest as part of a plea agreement. Later, at sentencing, Coleman stated that he wished to withdraw his no contest plea. The court appointed special counsel for purposes of bringing a motion to withdraw plea. The trial court denied the motion which was based on a claim that trial counsel was unprepared.

Coleman filed a timely notice of appeal and request for a certificate of probable cause to appeal the denial of his motion to withdraw plea. The trial court issued the certificate of probable cause.

DISCUSSION

Coleman contends that the trial court abused its discretion in denying his motion to withdraw his no contest plea. (§ 1018.) We disagree.

A defendant is permitted to withdraw a plea of guilty or no contest only upon a showing of good cause by clear and convincing evidence. (*People v. Weaver* (2004) 118 Cal.App.4th 131, 146; *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617; § 1018.) To establish good cause, the defendant must show by clear and convincing evidence that he accepted the plea as a result of mistake, ignorance, duress, fraud, or any other factor overcoming his or her exercise of free judgment. (*People v. Cruz* (1974) 12 Cal.3d 562, 566; *People v. Ravaux* (2006) 142 Cal.App.4th 914, 917.) A plea cannot be withdrawn simply because the defendant changed his mind. (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.) We review the trial court's decision for an abuse of discretion. (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

In this case, Coleman decided to change his plea during jury voir dire at trial. Defense counsel and the trial court both summarized the plea agreement and, after expressing some reservations, Coleman acknowledged that he understood all of its terms and affirmed that he would enter into the plea agreement. He stated, "I'm willing to take that deal." He stated that he did not commit the offenses but, because they could not find the actual perpetrator, he was "going to have to end up doing time for something I didn't do." Coleman, an African American, also indicated concern about the racial makeup of the jury pool by stating that he wanted to avoid a trial by people who were not his racial peers.

The trial court explained that Coleman had the option of not accepting the plea agreement and going to trial, and that only he could make that decision. Coleman repeated his concern with the absence of African Americans in the jury pool, but stated that the plea was preferable to a guilty verdict.

The court emphasized that no one was pressuring him to take the deal, but Coleman stated that he was "making a decision out of a smart observation." He acknowledged that he had spoken to his counsel regarding his rights and defenses, and that he understood the consequence of his plea and the constitutional rights that he was waiving. The trial court then found that Coleman had "freely, voluntarily, knowingly and intelligently waived" his rights.

At his sentencing hearing approximately one month later, Coleman informed the trial court that he wished to withdraw his plea, and the court appointed separate counsel to represent him in a motion to withdraw his plea. At the hearing on that motion, Coleman's counsel argued that Coleman was confused about the exact sentence he would receive, was not clearly advised of other facts regarding the plea, was pressured into accepting the plea, and that trial counsel was not adequately prepared for trial. Coleman specifically complained about the lack of sufficient discovery, and failure to challenge the absence of African Americans in the jury pool.³

³ The record includes no information regarding the racial makeup of the jury pool.

Based on this record, the trial court did not abuse its discretion in denying the motion to withdraw the plea. Coleman asserts that the plea was entered into "reluctantly" and due to a "fear" of being convicted of the offenses in a trial. We do not doubt that Coleman's no contest plea to a long prison sentence was entered reluctantly, and because he was fearful of an even longer sentence if he were to be convicted of all charged offenses. But, such concerns are inherent in plea agreements where a defendant must choose between the plea and the risk of trial.

At the time of the plea, Coleman clearly indicated that he was entering into the plea as preferable to the risk of a longer prison sentence after trial. The record shows that he was aware of that dilemma and, in his own words, acted "out of a smart observation." Coleman's statements show that he made an intelligent and knowledgeable decision to further his own interests.

At his motion to withdraw plea, Coleman also argued that his trial counsel was unprepared for trial. Trial counsel disagreed stating that he had reviewed discovery, spoken with his client, and interviewed witnesses. There is no showing that counsel was unprepared, and no argument at sentencing or on appeal that trial counsel had provided ineffective assistance. There is also no contention on appeal that the racial makeup of the jury pool prejudiced Coleman or resulted in a plea that was not knowingly or intelligently made.

Finally, Coleman argues that the trial court applied the wrong standard in ruling on the motion to withdraw plea. He asserts that the trial court decided based on the probability that he would have been convicted at trial rather than on the absence of mistake, ignorance or other factors overcoming his exercise of free judgment. Although the trial court stated that it had reviewed the preliminary hearing transcript prior to its

ruling, the record clearly shows that the trial court fully understood the proper basis for granting or denying a motion to withdraw plea.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Martin J. Tangeman, Judge
Superior Court County of San Luis Obispo

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